

21543



PTO/SB/30

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|--|------------------------|--------------|
| Request For Continued Examination (RCE) Transmittal | Application Number | 09/603,528 |
| | Filing Date | 23 June 2000 |
| | First Named Inventor | FÄRBER, H. |
| | Group Art Unit | 1732 |
| | Examiner Name | Fontaine, M |
| | Attorney Docket Number | 21543 |

This is a Request for Continued Examination under 37 CFR 1.114 of the above-identified application.

1. Submission required under 37 CFR 1.114

- a. ☒ Previously submitted
- i. ☒ Consider the amendment(s)/reply under 37 CFR 1.116 filed 8 July 2004.
- ii. ☐ Consider the arguments in the Appeal Brief or Reply brief filed _____.
- iii. ☐ Other _____.
- b. ☐ Enclosed
- i. ☐ Amendment/Reply
- ii. ☐ Affidavit(s)/Declaration(s)
- iii. ☐ Information Disclosure Statement (IDS)
- iv. ☐ Other _____.

COPY

2. Miscellaneous

- a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of _____ months.
- b. ☐ Other _____.

3. Fees

- a. ☐ The Director is hereby authorized to charge the following fees or credit any overpayments to deposit account 18-2025.
- i. ☐ RCE fee required under 37 CFR 1.17(e).
- ii. ☐ Extension of time fee under 37 CFR 1.136 or 1.17
- iii. ☐ Other _____.
- b. ☐ Check in the amount of \$ _____.
- c. ☒ Payment by credit card previously submitted (PTO-2038 copy attached).

| SIGNATURE OF ATTORNEY | | | |
|-----------------------|---------------|----------|-------------|
| Name | Herbert Dubno | Reg. No. | 19752 |
| Signature | | Date | 9 July 2004 |

| CERTIFICATE OF MAILING | | | |
|--|------------------|--------------------|-------------|
| I hereby certify that this correspondence is being deposited with the the United States Postal service with sufficient postage as express mail in an envelope addressed to: Commissioner for Patents, Box Request for Continued Examination, Washington, D.C. 20231 on: <u>9 July 2004</u> . | | | |
| Name | Arlene Bernstein | EV031252551 | |
| Signature | | Date | 9 July 2004 |

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1732

21543

Certificate of Facsimile Transmission

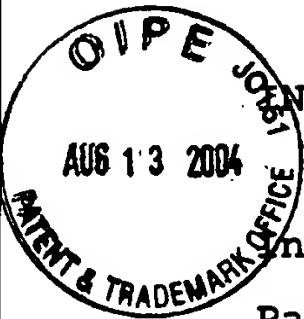
I hereby certify that this paper is being transmitted by facsimile to the United States Patent and Trademark Office on the below-given date.

AUG 13 2004

EV031252786

Name of person signing

Signature



IN THE U.S. PATENT AND TRADEMARK OFFICE

Inventor

Horst FÄRBER

Patent App.

09/603,528

Filed

23 June 2000

Conf. No. 9899

For

SAMPLING TUBE AND METHOD OF MAKING SAME

Art Unit

1732

Examiner Fontaine, M

Hon. Commissioner of Patents

Box 1450

Alexandria, VA 22313-1450

RESPONSE TO NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION

The undersigned hereby requests withdrawal of the notice of improper request for continued examination which issued 29 July 2004. A copy of that notice is returned with this reply.

This communication follows a telephone call from Arlene Bernstein of the office of the undersigned to Ms. Hensley.

On 8 July 2004 the Patent and Trademark Office timely received (see postcard), a request for continued examination (copy attached) along with a submission as required by 37 CFR 1.114 in the form of an amendment after final action. The postcard receipt acknowledges both and the requisite extension of the term and the fee for both the extension and the request for continued examination.

Since the request for continued examination was not in the standard form, the standard form was submitted on the next day, 9 July 2004 together with a copy of the fee charge form.

Apparently, Ms. Hensley acknowledged only the latter form without recognizing that it was simply intended to supplement the document filed on the previous day.

Since on 9 July 2004 there was in the Patent and Trademark Office, within the term as extended by the petition for extension filed here, both the request for continued examination on proper form and the submission under 37 CFR 1.114, the request for continued examination was not improper and the notice should be withdrawn along with any abandonment of the application.

Respectfully submitted,
The Firm of Karl F. Ross P.C.



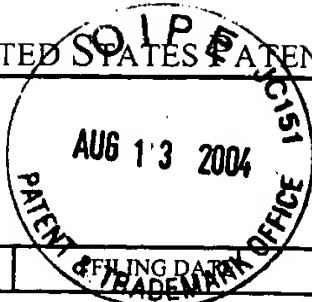
By: Herbert Dubno, Reg. No. 19,752
Attorney for Applicant

db-

DATED: August 4, 2004
5676 Riverdale Avenue Box 900
Bronx, NY 10471-0900
Cust. No.: 535
Tel: (718) 884-6600
Fax: (718) 601-1099
Encls: Copy of Notice
Postcard
Copy of Request



UNITED STATES PATENT AND TRADEMARK OFFICE

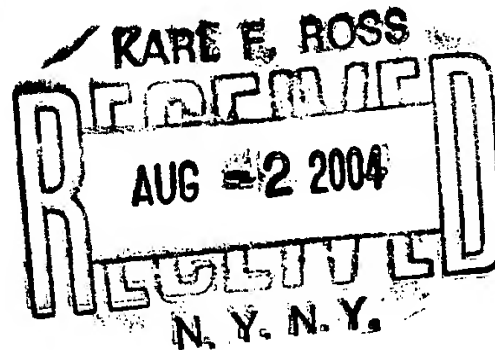


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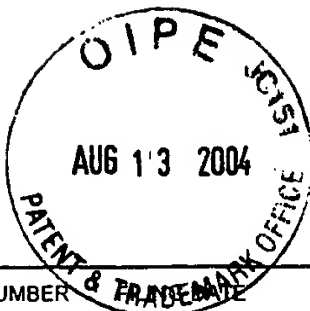
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|--|-------------|----------------------|---------------------|------------------|
| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 09/603,528 | 06/23/2000 | HORST FARBER | 21543 | 9899 |
| 535 | 7590 | 07/29/2004 | EXAMINER | |
| THE FIRM OF KARL F ROSS 5676 RIVERDALE AVENUE PO BOX 900 RIVERDALE (BRONX), NY 10471-0900 | | | ART UNIT | PAPER NUMBER |

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450,
Alexandria, VA 22313-1450
www.uspto.gov

APPLICATION NUMBER

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

DATE MAILED:

NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)

The request for continued examination (RCE) under 37 CFR 1.114 filed on 7/9/04 is improper for reason(s) indicated below:

- ☐ 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d). An RCE cannot be treated as a CPA.
- ☐ 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b).
- ☐ 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
- ☒ 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
- ☐ 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on _____. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
- ☐ 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
- ☒ 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

Note: A continued prosecution application (CPA) under 37 CFR 1.53(d) cannot be filed in a utility or plant application. A CPA filed in a utility or plant application that has a filing date on or after June 8, 1995 will be treated as an RCE under 37 CFR 1.114. The request for a CPA in the instant application, however, has been treated as an improper RCE for the reason(s) indicated above.

A copy of this notice MUST be returned with any reply.

Direct the reply and any questions concerning this notice to:

Ricardo Hensley, Technology Center 1700
~~(703) 308-3657~~ 571-272-1026